UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

CANYON PLUMBING AND HEATING COMPANY

Employer

and Case 36-RD-1571

MICHAEL J. BRUNO, an Individual

Petitioner

and

PLUMBERS AND STEAMFITTERS LOCAL UNION NO. 290 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[1] in this proceeding,[2] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[3]

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[1] The parties filed briefs, which have been considered.

[2] Joint Exhibit 1, marked at hearing, is hereby received into the record.

[3] On brief, the Employer states that a further issue in the hearing was the Board's jurisdiction over the Employer. However, the Employer entered into a written stipulation which is Joint Exhibit 1 in which it agrees, inter alia, that the Board has jurisdiction. Further, the Employer concedes in its brief that it meets the Board's jurisdictional standard for non-retail enterprises and that such standard is applicable to the Employer. Evidence

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:

The Employer is engaged in the operation of a plumbing service in Beaverton, Oregon. The petition seeks decertification of all plumbers and utility plumbers employed by the Employer, a unit of two. The Union contends that the appropriate unit is a multi-employer unit including employees of more than 200 employers.

On July 9, 1997, the Employer signed a Compliance Agreement for Master Labor Agreement.[4] The relevant Master Labor Agreement is between Plumbing & Piping Industry Council, Inc. (the Council, herein), and the Union, with a term of April 1, 1997 to March 31, 2003. In the Compliance Agreement, the Employer agreed, inter alia, that it was assigning its bargaining rights to the Council, authorizing the Council to act as its representative for collective bargaining purposes, and agreeing to become part of a multi-employer bargaining unit.

On September 1, 1998, the Employer notified the Council and the Union that it was withdrawing any and all bargaining authority given by it to the Council, effective no later than the date of the letter. The Compliance Agreement signed by the Employer provides that: "either party may terminate this Compliance Agreement as of the termination date specified in the Master Labor Agreement then in effect by giving written notice to the other party … of its intention to terminate this Compliance Agreement, which notice must be actually received at least (150) days but not more than (180) days prior to the termination date in the applicable Master Labor Agreement."

The instant petition was filed on March 22, 2000.

The above facts demonstrate that the issue herein is as much a matter of timeliness as of appropriate unit. It is well-established that a contract of more than three years' duration does not constitute a bar to an election after the first three years. The Board provides an open period for the filing of a decertification petition 90 to 60 days prior to the third year anniversary of the contract. *M.C.P. Foods, Inc.,* 311 NLRB 1159 (1993). Inasmuch as the third anniversary of the relevant contract herein occurred on March 31, 2000, the instant petition, filed only nine days earlier, is clearly untimely.

Moreover, the Employer's withdrawal from multi-employer bargaining is also untimely, inasmuch as such notice was given far more than 180 days prior to the expiration on the Master Labor Agreement on March 31, 2003. Indeed, even if the "three-year rule" noted above applied to the Employer's notice of withdrawal, such notice as was given here would still have been considerably premature. I conclude, therefore, that the petitioned-for unit is not the appropriate unit, and that the appropriate unit is the multi-employer unit.

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otherwise in the record supports a conclusion, and I so find, that the Employer meets the Board's jurisdiction standard for non-retail enterprises inasmuch as a portion of its business greater than de minimus is non-retail, and during the past 12 months it purchased and received goods or services valued in excess of $50,000 directly from outside the state of Oregon or from suppliers who themselves purchased and received those goods or services directly from outside the state of Oregon. *Culligan Soft Water Service*, 149 NLRB 2 (1964).

[4] There is no evidence or contention that this was an 8(f) agreement.

Having so concluded, i.e., that the petition filed herein is untimely, and that the appropriate unit is a multi-employer unit including employees of approximately 200 employers, I shall dismiss the petition. Accordingly,

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by April 28, 2000.

DATED at Seattle, Washington, this 14th day of April, 2000.

/s/ CATHERINE M. ROTH

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